THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20508 OF 2005

DATED:19.9.2005

Between:

Sabavat Rukman Naik

…Petitioner

And

The Deputy Director of Survey & Land Records,

Hyderabad District, Collectorate, Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20508 OF 2005

ORDER:

The petitioner claims to be owner and possessor of land admeasuring 729 Sq.yards in S.No.102/3, Road No.12, Yamuna Nagar Cooperative Housing Society, Banjara Hills, Hakeempet Village, Shaikpet Mandal, Hyderabad. He claims to have got the title to the land by virtue of a registered gift deed dt.7.12.1979 executed by Sri Syed Ahmed Nooruddin, who was allegedly assigned an extent of Ac.28.27 guntas as per the relevant Assignment Rules, 1954. One R.Venkatrami Reddy claimed that he was allotted plot No.309 of Sri Venkateswara House Building Society in S.Nos.102/1 and 403/1 of Hakimpet Village, Shaikpet Mandal under registered sale deed dt.22.10.1984. He and others applied to Municipal Corporation of Hyderabad (MCH) for building permission which was granted on 26.11.2002 permitting

construction of first floor and second floor in plot No.309. The petitioner also claims the same land. Therefore approached the Special Court under A.P.Land Grabbing (Prohibition) Act, 1982 (for short, the Act) by filing L.G.C.No.56 of 2002. He also filed I.A.No.570 of 2003 seeking a direction to conduct local inspection to verify whether R.Venkatrami Reddy and others are making construction in plot Nos.308-A and 309-A in S.No.102/3 of Hakimpet Village. It is alleged that the Deputy Director of Survey and Land Records, first respondent herein, submitted a report *inter alia* stating that plot Nos.308 and 309 of Sri Venkateswara Cooperative Society are localized within old S.No.102/3 of Hakimpet Village. The petitioner herein applied for no objection certificate to the District Collector for construction of room and permanent compound wall in the plot in possession of the petitioner being Plot No.77/19 of Yamuna Nagar Cooperative Society. The District Collector issued Memo dt.3.8.2001 stating that petitioner's land in Plot No.77/19 is Government land. Therefore, the petitioner approached the Survey Department for surveying the land and demarcating the petitioner's plot. By letter dt.27.3.2004 he was informed that S.No.102/3 could not be located. Therefore, he filed W.P.No.23652 of 2004 seeking a Writ of Mandamus to the Deputy Director of Survey and Land Records and the Commissioner, Municipal Corporation of Hyderabad, to consider and dispose of the representation filed by the petitioner under Sections 9 and 10 of the A.P. Survey and Boundaries Act, 1953. This Court by order dt.22.12.2004 directed the first respondent herein to take appropriate steps on the application submitted by the petitioner for conducting survey of the land in S.No.102/3 of Hakimpet Village. Thereafter, first respondent issued a notice dt.4.3.2005 to the petitioner to be present at the time of survey on 10.3.2005. After taking appropriate steps for survey, second respondent by impugned Memo dt.17.8.2005 rejected the request of the petitioner for demarcation of the land in S.No.102/3.

Learned counsel for the petitioner, Sri B.Sudhakhar Reddy, does not dispute that L.G.C.No.56 of 2002 is still pending before the Special Court under the Act and the question whether petitioner's plot is situated in S.No.102/3 is also one of the questions that arose for consideration before said Court. He further submits that MCH has already granted permission to R. Venkatrami Reddy and others for construction of residential house and they have also constructed house, which would show that the land is very much available and therefore the impugned Memo is incorrect and illegal. He would also submit that though this Court directed in W.P.No.23652 of 2004, to intimate the petitioner about the survey, no such intimation was given to the petitioner and that the land is very much available which can be surveyed and demarcated. According to the learned counsel by reason of the judgment of Division Bench of this Court in W.P.No.25763 of 2001, dt.6.4.2005, upholding the judgment of the Special Court in L.G.C.No.187 of 1997 it is not permissible for first respondent to reject the request of the petitioner that the land in S.No.102/1 and other survey numbers is Government land.

The petitioner purchased the property bearing plot No.77/19 from Yamuna Nagar Cooperative Housing Society which is arrayed as respondent No.3 in W.P.No.25763 of 2001 filed by State of Andhra Pradesh against L.G.C.No.187 of 97. Further, even according to the petitioner his property was grabbed by R. Venkatrami

Reddy and others who constructed house after obtaining necessary permission from MCH. It is also not denied that when the petitioner sought ad interim injunction orders against the alleged land grabbers, the Special Court declined to pass any interim orders leaving the parties to abide by the final decision in L.G.C.No.56 of 2002. In such circumstances, this Writ Petition is wholly misconceived. Further, a reading of the impugned order would show that though the sethwar of 1344 fasli records S.No.102 admeasuring Ac.323.29 guntas, the same was not implemented due to cancellation of assignment by the Government in their orders in G.O.Ms.No.804, dt.3.6.1965 and S.No.102/1 was correlated to T.S.No.1 which is recorded as Government poramboke land and therefore respondents were justified in rejecting the request for demarcation of the land. Even otherwise, whether the land in Plot No.77/19 which is allegedly belongs to the petitioner is comprised in S.No.102, the sethwar of which was not implemented, and whether cancellation was done (presumably cancellation of assignment of donor of the petitioner) are all matters of evidence and therefore these questions cannot be ventured into in this Writ Petition. First respondent issued impugned Memo as per the records and there is presumption in favour of the said Memo. This presumption has to be rebutted by leading appropriate evidence, which is not placed before this Court. If the prayer of the petitioner is accepted and a further direction is given to the respondents to demarcate the land allegedly belong to petitioner it would amount to declaring the title of the petitioner which is not permissible in these proceedings. Liberty is given to petitioner to raise all the questions.

The Writ Petition with the above observations is dismissed. No costs.

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(V.V.S.RAO, J)

19.9.2005

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